



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 6, 1998

Mr. Mark C. Goulet  
Walsh, Anderson, Underwood,  
Schulze & Aldridge  
P.O. Box 2156  
Austin, Texas 78768

OR98-0630

Dear Mr. Goulet:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113395.

The Lago Vista Independent School District (the "district"), which you represent, received a request for information relating to the suspension of a specific teacher. You claim that the requested information may be excepted from disclosure under section 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the documents at issue.

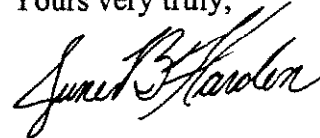
First, you assert that the documents at issue may be confidential teacher evaluations pursuant to the Education Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 21.355 of the Education Code provides, "Any document evaluating the performance of a teacher or administrator is confidential." This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In Open Records Decision No. 643 (1996), this office also concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* After examining the submitted material, we do not believe that the documents you have submitted are confidential evaluations under section 21.355.

You next argue that documents may be withheld under section 552.102 of the Government Code. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652

S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public under common-law privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. We do not believe that the documents are protected by a right of privacy. Open Records Decision Nos. 470 (1987), 455 (1987) (public employee's job performance is not generally protected by right of privacy). The documents must, therefore, be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/glg

Ref.: ID# 113395

Enclosures: Submitted documents

cc: Mr. Clyde Turknett  
20603 Deep Creek  
Lago Vista, Texas 78645  
(w/o enclosures)